

P R O C E E D I N G S

May 2nd, 1997 3:30 p.m.

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(The following proceedings were reported by Allison Pauline:)

THE COURT: Recall the jury.

MR. WILNER: The hook comes out 25 minutes from now.

THE COURT: Okay.

MR. MOTLEY: You told me I had 50.

THE COURT: I was -- never mind. You have a person who is going to operate the hook already aware?

MR. WILNER: They are dying to operate the hook.

MR. MOTLEY: And I hope it's not a one-armed hooker either.

THE COURT: Okay. That was the word I was trying to avoid, Mr. Motley.

THE COURT: You may proceed, sir.

MR. WILNER: May it please the Court? Hello again, this will be brief, but I'm dying to talk to you, but I'll restrain myself for the next 25 minutes and then we'll be done.

This defendant has a very unusual position, Hedquist & Associates Reporters, Inc.

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and that is that everybody knows but it doesn't agree, it sells candy with razor blades inside to anyone who wants to buy it, and then blames -- suggests that those people shouldn't have bought that candy. Just shouldn't have bought it. And for the next 25 minutes I hope to explain why that's the wrong thing to do.

He first thing I heard about was that Reynolds really didn't need to place a warning on its products even though they knew that they were lethal in the time period from 1941 up until 1969 because everybody knew. And this was talked about so much in this trial that I tried to make a list of the things that supposedly -- I wondered whether everyone knew. I wonder in 1950 or '53 or 1961 did everyone know that addiction to nicotine is physiological, that actually it effects your brain and probably irreversibly. Dr. Feingold didn't know it. That's for sure.

In fact, it's interesting that much of this knowledge came out fairly recently. Did the public know that death awaits 40 to 50 percent of regular users of cigarettes in 1961? Certainly that information was available to Hedquist & Associates Reporters, Inc.

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Reynolds.

Did the public know that the product was loaded with carcinogens which caused irreversible genetic damage? Did they know that too? Certainly Reynolds knew that.

Did the public all know that cancer of the esophagus, cancer of the pancreas, cancer of the larynx and cancer of the lung awaited the

9 foreseeable users who used it just like it was
10 expected and intended? Reynolds knew that. Did
11 they know that heart disease awaited the
12 excepted users? Reynolds knew all that.

13 To say that they are removed from the
14 obligation of warning because they believe
15 everyone knows is like saying there is no need
16 to label a poison, because people know that
17 poison in general is dangerous. But do they
18 know about Salems and do they know how dangerous
19 and do they know -- the kind of knowledge that
20 Reynolds has?

21 Now, this is the instruction, the full
22 instruction that you'll be given. It says the
23 manufacturer has a duty to exercise reasonable
24 diligence in warning of reasonable -- reasonably
25 foreseeable dangers associated with the use of
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1 its product and we agree.

2 A manufacturer has a duty to warn when the
3 hazards associated with a product are not
4 obvious. Should we say that all of the hazards,
5 the critical hazards of cigarettes are obvious
6 from the package? How would one know? We would
7 have to be cancer researchers to know that.

8 Are not obvious, reasonably apparent, same
9 thing, and here is the key, are not as well-known
10 to the user as to the manufacturer. Who knew
11 more? Was it Reynolds or was it the public at
12 large? A manufacturer, however, does not have a
13 duty to warn of risks associated with this
14 product when those risks are reasonably known to
15 the average consumer with knowledge common to
16 the community.

17 And, again, are we to say that Reynolds
18 gets off the hook because those risks are known
19 to the community in sufficient detail to protect
20 the customer or did Reynolds have knowledge and
21 did the scientific -- coming both from inside
22 and outside the scientific community that would
23 have required Reynolds to be serious about
24 warning and not to be serious about hiding the
25 ball?

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1 In the suggestion that the public somehow
2 knows everything about cigarettes that Reynolds
3 denies, we have heard that the public knows that
4 it may be hazardous, that the public has heard
5 or seen allegations, that the public has better
6 knowledge of this than some other problem, I
7 don't know that that proves. The fact that
8 cigarettes are big news means that a lot of
9 people are involved in this and there has been a
10 lot of disease. It's true this is a big issue,
11 but it doesn't have anything to do with the
12 amount of knowledge that's required before you
13 can just sign off as a manufacturer and say
14 forget it.

15 What that provision in the law is meant to
16 accomplish is to prevent the requirement for
17 warnings on truly obvious things like knives may

18 be sharp. It is true that if it's obvious from
19 the nature of it water is wet, you can fall down
20 off a roof and knives are sharp, that the law
21 does not require we go around warning about
22 things that are truly obvious.

23 But for the cigarette industry to sit back
24 there and Reynolds in particular with specific
25 knowledge about the lethality of its products to
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1 promote them in such a way that they seem very
2 attractive, to put razor blades in the candy and
3 then back away from it and say, well, everybody
4 knew generally about the risks, so we really
5 didn't have to do anything. That is not the
6 intent of that particular law and it shouldn't
7 be your intent to follow that.

8 We learned also --

9 MR. CRIST: I'd object to the statement.
10 Expressions of the intent of the law, I think
11 the instructions ought to come from the court.

12 THE COURT: The intent of the law is not a
13 matter of concern for the jury. The law will be
14 as I will instruct you at the conclusion of
15 arguments and prior to your deliberations.

16 MR. WILNER: The -- we also heard that
17 the -- there were certain agencies like the
18 AMA's various doctors who pitched in at times
19 and said we don't think a warning is necessary
20 at different times. It was unclear in Mr.
21 Crist's explanation whether they were saying a
22 warning wasn't necessary because they thought
23 everyone knew, which is the AMA in 1964, and
24 I'll discuss that in a minute, or whether they
25 were saying they just didn't disagree, they were
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1 doubters. They hadn't been convinced yet.

2 When this whole subject was covered about
3 with Dr. Feingold we talked about there were
4 doubters. A lot of them worked very closely
5 with the cigarette industry. We have proven
6 that. The AMA on the eve of making that
7 statement this -- this -- what I characterize as
8 an absurd statement, to say that no one would be
9 benefitted, even young people, by a proper
10 warning, something that congress rejected, of
11 course, two years later, and passed a warning
12 even though in '66, it was much too weak, but
13 the AMA on the eve of that received its \$10
14 billion grant from the cigarette industry, a
15 little too close to call.

16 The question is -- is suggested that a
17 warning would not have made a difference, and
18 for R.J. Reynolds to suggest having chosen not
19 to put a warning on for purposes of sales of its
20 product to come back now and say, well, we don't
21 think the warning would have made a difference
22 consider the credibility of that. Evidently
23 they thought that the warning would have made a
24 difference in sales. And if it would have made
25 a difference in sales it means some people might
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1 have seen an adequate warning and not bought.

2 Certainly it wasn't the problem with
3 printing it up. I mean, we know that they had
4 the money to print it and put it on the
5 package. What would be the down side? Why
6 would they care? If it's true that everybody
7 knows, why wouldn't they say, well, just out of
8 caution we'll just go ahead and put a nice big
9 red warning, a nice skull and cross bones on
10 there, since if everybody knows already it won't
11 effect our sales, but we know that's not true.

12 It's exactly that effect that they didn't
13 want to have. And there comes a time when the
14 birds come home to roost and this is that time.
15 All those decisions that were made for their
16 profits over the years to withhold this
17 information have built up in Jean Connor,
18 through Jean Connor they are coming back.

19 Now, let me talk a little bit about since
20 they discussed whether putting a warning would
21 have made a difference. It's true depending on
22 the strength of your addiction or your
23 dependence information may or may not be
24 valuable. It's always valuable, but it may or
25 may not be enough. It takes health, it takes

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1 luck, it may take friends, it may take a
2 physician. Jean Connor got an intervention.
3 She did. She got a physician telling her,
4 listen, this is serious stuff. Stop.

5 It was really the first time that that
6 serious intervention happened in her life and
7 the sad thing about it is it came too late. It
8 came too late to save her. If she hadn't been
9 fatally ill at that time, would she have
10 succeeded in terminating smoking for good?
11 We'll never know. She remained on the patch
12 until almost the day she died.

13 We'll never know whether she would have
14 been a relapse or whether she would have
15 succeeded. She got the wake up call but
16 unfortunately for her the damage had been done.
17 Can we hold that against her? I think not. Mr.
18 Crist says, look, nicotine addiction doesn't
19 destroy families. It doesn't? I think it
20 does.

21 Mr. Crist seeks to trivialize addiction to
22 suggest that addiction is like -- addiction to
23 nicotine can be considered to be addiction to
24 sports or addiction to -- even to caffeine or to
25 Coca Cola. I would suggest that if Coca Cola

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1 were killing people at the rate of 40 percent of
2 regular users who were dying from some horrible
3 cancer from Coca Cola that we could take very
4 seriously the issue of whether caffeine was
5 truthfully addictive. But right now it doesn't
6 seem to be a big problem. There are no diseases
7 associated with caffeine. It appears to be self
8 regulating. It may have an effect on the brain

9 and it may not, but it just isn't a medical
10 issue. The same with jogging and so forth.
11 Those kinds of things are not considered
12 addictions as Dr. Feingold discussed. They are
13 not exogenous drugs and they don't lead to a
14 maladaptive use pattern, but nicotine does, not
15 that it makes you crazy, it doesn't make you
16 crazy. It kills you because of the thing that
17 comes with it, which is the bad stuff, the razor
18 blade in the candy, the carcinogens in the
19 smoke. That is what does it with nicotine.

20 If it were just pure nicotine it would
21 probably be okay. It's not exactly like alcohol
22 and cocaine, we agree, but it's not pure
23 nicotine and that's the defect in the cigarette,
24 enough nicotine to keep you addicted and enough
25 carcinogens to kill you dead, and that kind of

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1 product should not be in its present state or in
2 its state in 1966.

3 What kind of product was it? This is in
4 evidence as a Reader's Digest article called,
5 The Search for Safer Cigarettes, November 1959,
6 and it gives a ranking of all of the cigarettes
7 and this is tar. And look who is on top. Salem
8 has the highest tar of all the cigarettes. It
9 has a higher tar, and these are the filters at
10 25, it has a higher tar of many of the
11 unfiltered, and that tar was never marked on the
12 box.

13 So did the consumer know what they were
14 buying with Salem? Did they know that they were
15 buying the worst of the worst? Did they know
16 when they bought the filter -- were they
17 thinking they were getting some benefit when it
18 was really worse than a lot of the nonfilters?
19 How could this be? Look at the nicotine, deadly
20 nicotine, addictive nicotine, nicotine that also
21 causes cancer directly. Look at the deadly
22 nicotine in Salem King, the highest of the --
23 the highest of the filters.

24 Again, where would a consumer get this
25 information? This is 1959. Jean Connor started
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1 smoking these things in 19- -- in the early
2 1960s, where would she get the information? How
3 would she know? If she were lucky she could
4 read Reader's Digest but there is no law saying
5 you have to do that. It happened to be
6 published here, good thing.

7 Why would the R.J. Reynolds Tobacco Company
8 conceal that information? One reason, I guess,
9 they don't want you to think about the stuff.
10 They want you to think about this. This -- this
11 is what they want you to think about, not that
12 nasty old nicotine, not that. They don't want
13 you to think about death. They want you to
14 think fantasy world, and that's the razor blade
15 inside that package of candy.

16 Now, Dr. Feingold made an appearance, it
17 was very nice to see him again, and the purpose

18 of this was to show that he was all wrong, that
19 he changed his mind. Well, he did. Dr.
20 Feingold in -- like many other people was
21 unaware until fairly recently of the -- how much
22 impact this nicotine has on the brain, the
23 physiological side of the impact. And when I
24 went back and I said aren't you kind of
25 surprised that you held that belief in '92? And
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1 he says, yeah, I tell you what, I don't
2 remember -- I didn't remember how late it was.
3 I read 1988 Benowitz, 1994 the Benowitz article
4 on the Threshold of Nicotine Addiction. I read
5 the Teague documents which were incredible and I
6 read the 1996 FDA report and, yeah, I see what's
7 going on now. And he does. And a lot of people
8 do, except these guys. They don't get it. They
9 want to hold on to the 1964 definition. It's
10 not intoxicating so just let's forget about the
11 effect on the brain.

12 Well, as soon as this internal stuff got
13 out, as soon as the Teague memorandum, the other
14 research in California and the FDA research got
15 out, it's become very, very clear what's going
16 on to everyone but the -- R.J. Reynolds.

17 MR. MAXWELL: 10 minutes left.

18 MR. WILNER: 10 minutes left. Thank you.
19 All right. Let me handle this other issue. On
20 the verdict form -- where is the verdict form?
21 Does anybody have it? I'll get it in just a
22 moment.

23 On the verdict form -- we'll return to
24 this. Was there negligence on the part of the
25 defendant R.J. Reynolds Tobacco Company? We
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1 suggest you say yes. Were the cigarettes
2 manufactured by R.J. Reynolds unreasonably
3 dangerous and defective in the legal cause? We
4 suggest you say yes. If your answer was no skip
5 it. If your answer is yes, go on.

6 Did the decedent know or should she have
7 reasonably known of her claimed injuries on or
8 before March 29th, 1991? The answer is no.
9 Now, why do I say that? Well, I want to say
10 more than just no. I want to say that you
11 can -- you can tell -- what is the expression?
12 A chain is only as strong as its weakest link.
13 I want to suggest to you that you can evaluate
14 the credibility of the whole shooting match over
15 here by perhaps something that we can all look
16 at it and it doesn't refer to anything else
17 outside this case, it doesn't take any other
18 knowledge, but it's incredible, and if it's
19 incredible here it suggests that a lot of the
20 arguments being made are, in fact, incredible.

21 MR. CRIST: Your Honor, I object to the
22 challenge of credibility.

23 THE COURT: I'm not sure I followed the
24 argument.

25 MR. WILNER: Well, Your Honor, I'm through
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1 with it. I'm just going to present the argument
2 on this -- on this -- on the verdict number
3 three.

4 The argument was made that Jean Connor
5 should have known enough to file a cigarette
6 related illness claim before 1991 and this thing
7 is from 1982. So what does it say exactly? It
8 says -- this is some physical examination, who
9 knows, somewhat emphysematous changes, that's
10 it. There is no diagnosis of any disease.
11 There is no lung cancer diagnosis. If she had
12 gone into court with that, how long would that
13 suit have lasted? Your diagnosis is -- some
14 doctor said some what emphysematous changes and
15 that's it? That's not anywhere near what it
16 takes to file a lawsuit and have a diagnosis,
17 and this is even worse. This is some nurse's
18 note that says SOB-smoking and we don't even
19 know who wrote it. That would not be enough.

20 Anyone who has momentary or whatever,
21 shortness of breath, and someone else says it's
22 due to smoking, lawsuits have to be on sterner
23 stuff than that. That's kind of neither here
24 nor there, so to speak. Where is the diagnosis
25 that caused -- that led to her death? Here it

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1 says right here, this is 6/22/93, after '91,
2 this is Dr. Joyce he testified here, Miss Connor
3 is a 47 year old woman with newly diagnosed
4 squamous cell carcinoma. The death certificate,
5 as you will recall, says lung cancer. That's
6 the lung cancer. This is like proving the sky
7 is blue, but we have to do it. So consider the
8 source.

9 All right. Next. And I'm almost done.
10 How many minutes do I have? Get the hook.

11 MR. MAXWELL: 6 minutes.

12 MR. WILNER: 6 minutes? Okay.

13 MR. MOTLEY: It's actually 3.

14 MR. WILNER: Okay. We are told that
15 Reynolds published -- actually published what
16 was suggested by Dr. Rodgman that they had hid,
17 and that Rodgman's comment was only a short --
18 we have Rodgman here? That Rodgman's comment
19 was only a momentary lapse perhaps, but I'll
20 show you that it's not just one place in the
21 document that he says we've been -- we haven't
22 published things because they concern cancer
23 because later in the document, as soon as they
24 find it, he says, I recommend we publish that
25 back stuff because it's going to be bad if they

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1 find it in a lawsuit.

2 Now, if that is not incriminating we
3 haven't found anything that is. That is
4 incriminating because it's a scientist who has
5 knowledge of -- that there has been a cover up
6 and he's trying to tell the head guys, you know,
7 let's do something before we get caught with our
8 hands in the cookie jar.

9 Now, the fact -- I don't know what was
10 published in '63, I'm not sure, but I'll tell
11 you it wasn't half of what was indicated here
12 that remained unpublished, because here it is.
13 If a tobacco company has -- members of this
14 research department have studied in detail
15 cigarette smoke composition and these numbers
16 relate to citations on the back of the paper --
17 and you can see this when you look at it.

18 Some of these findings have been published
19 and there are some published. We didn't say
20 they never published. The problem is they only
21 publish what they wanted to publish, which
22 didn't concern cancer. And here they say, but
23 much data remained unpublished and here is the
24 key word, because they are concerned with
25 carcinogenic or cocarcinogenic compounds and

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1 then all of those. And we've never seen those
2 published at all.

3 Now, here on the next page he says or on
4 the bottom of this page he says it's not my
5 intent to suggest that this company accept the
6 cigarette smoke health data at face value.
7 Really? Why shouldn't the company accept it at
8 face value? Good question.

9 This research scientist knows that the
10 upper management of R.J. Reynolds doesn't accept
11 things at face value when it comes to cancer and
12 smoke. So he says, oh, it's not my intent to
13 tell you to accept it, far be it from me, but I
14 do suggest that this company through its
15 research department actually participate in
16 cigarette smoke studies, and then over on page
17 15 -- this is the part here that we think is --
18 tells it like it is, it's recommended that the
19 data already available on physiologically active
20 cigarette smoke components, e.g., polycyclic
21 hydrocarbons and phenols be published. It's
22 recommended that an analytical procedures
23 concerning -- he's telling them not once, but
24 twice, get serious. Now, why public --

25 MR. CRIST: Excuse me.

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1 MR. WILNER: Yes.

2 MR. CRIST: Can I have my pen back?

3 MR. WILNER: Yes. Thank you. Why
4 publish? Well, the -- Reynolds also suggests,
5 look, it doesn't matter if you publish or not,
6 secrets are okay when it comes to cancer.

7 Mr. Motley will handle this in greater
8 detail, but the answer is -- just in brief, and
9 then I'll sit down. If the cigarette industry
10 had from the 1950s adopted a truthful approach
11 to the causation of disease by cigarettes, if it
12 had said publicly that we accept what is obvious
13 face value. We accept what has been called the
14 overwhelming evidence by Rodgman again, and that
15 contrary evidence was scant, we accept it. It
16 would have deprived all those -- all those
17 doubters, all those people who weren't sure of

18 any crush to stand on and the world would be
19 different.

20 We have one more chance and maybe it's
21 here. Thank you.

22 MR. MOTLEY: Anybody want to go home?
23 Anybody not want to go home? You've been so
24 patient it's kind of -- I feel like the last
25 preacher at a revival, those who want to be
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1 saved have already marched up front and those
2 who don't are ready to leave.

3 I would like to clarify one thing and,
4 please, I've only got a few minutes and be
5 patient with me. You've been so patient all day
6 and -- but one thing is very important, this
7 thing about why wasn't an autopsy done.

8 You've heard the testimony that doctors --
9 about why they don't do autopsies when there is
10 no reason to do one. Dr. Joyce -- we brought
11 him in here because we felt like you wanted to
12 hear from the people who treated her. And I
13 just want to show you what he said about why
14 more pathology wasn't done. This is from the
15 transcript from yesterday.

16 Question: Did you feel any need to make
17 any additional pathology studies based on the
18 information that you received from Dr. Holland?

19 Answer: No, I did not.

20 Now, ladies and gentlemen -- and you can
21 listen to the judge's charge, you won't here a
22 word in here about we got some burden to a do an
23 autopsy, okay, listen carefully, because you are
24 not going to hear it.

25 Now, I asked my group rather than me stand
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1 up here and telling you what I think the
2 evidence shows, I put together a montage or a
3 collection of clips from the trial to carry you
4 back down memory lane, probably farther down
5 that street than you want to go, but I hope that
6 this will provide some insight into what we
7 believe the evidence reasonably shows in this
8 very important case.

9 This is about 7 and a half minutes long.
10 It's all from the trial. It's all from the
11 video that has been taken in here, and bear with
12 us because they play an important part of what
13 I'm going to say when we are done with this.
14 Okay.

15 (Videotape playing.)

16 Question: Now, you talked about what was
17 common knowledge, would you agree with me that
18 it's obvious that if something is not released
19 -- and I'm talking about before 1969, and
20 before July 1st.

21 If something that Reynolds knows is not
22 revealed to the public then that can't be part
23 of the public's common knowledge, correct?

24 Answer: I don't know that I can -- I mean,
25 I don't know that I could agree with that
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1 blanket. I mean, the public might have the same
2 knowledge from other sources and it would, in
3 fact, be part of common knowledge.

4 Question: All right. : When you joined
5 R.J. Reynolds in 1977 with all these degrees and
6 with four months working at Liggett Myers, you
7 didn't know anything about tar and nicotine
8 levels of cigarettes, did you?

9 Answer: When I joined RJR?

10 Question: Yes, sir.

11 Answer: No, I didn't.

12 Question: You didn't know what all of the
13 chemicals were in cigarettes, did you?

14 Answer: No.

15 Question: You didn't know what all of the
16 carcinogens were that were creating when
17 cigarettes are burning?

18 Answer: No, I didn't.

19 Question: Was Winston with the filter
20 safer than Camel without a filter?

21 Answer: I don't know.

22 Question: You don't know. Is Salem safer
23 than Salem lights?

24 Answer: I don't know.

25 Question: Now, when you said this and
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1 these were your words, not mine, page 3027, the
2 Canada Expert Committee on Smoke Toxicity
3 Reduction, product modification might reduce
4 harm.

5 Now, when you said reduce harm, were you
6 talking about to humans?

7 Answer: Specifically talking about harm
8 reduction to smokers because cigarette smoking
9 certainly is a risk factor for a number of
10 diseases.

11 Question: No, sir. I'm not talking about
12 a risk factor. You used the word harm.

13 Answer: And that's what I meant by the word
14 harm.

15 Question: Do you concede that cigarette
16 smoke harms people? Yes or no.

17 MR. CRIST: Object, Your Honor. It's
18 beyond the scope of direct. This witness has
19 not been qualified in that area.

20 THE COURT: Overruled.

21 Question: When you use the word harm, Dr.
22 Townsend, do you concede that cigarette smoking
23 has harmed at least one human being?

24 Answer: Mr. Motley --

25 MR. MOTLEY: Judge, can I have an
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1 instruction for him to answer that question,
2 please?

3 THE COURT: Answer the question that is put
4 to you, sir,.

5 Answer: I don't know.

6 Question: And was there a feeling of -- a
7 spirit of pride in what you were doing?

8 Answer: Very definitely. We were very

9 excited about what we were doing.
10 MR. CRIST: Your Honor, I object this goes
11 beyond the scope of closing.
12 THE COURT: Stop the tape.
13 MR. MOTLEY: May I approach?
14 THE COURT: Approach.
15 (The following proceedings were held at
16 side-bar out of the presence of the jury.)
17 MR. CRIST: Your Honor, there was not one
18 word either in Mr. Motley's original closing or
19 Mr. Wilner's original closing about knowledge of
20 the biological research division, therefore --
21 about the biological research division. The
22 only subject about which this testified,
23 therefore, I specifically did not deal with it
24 in my closing argument and now what they are
25 trying to do is try to end run me to bring up
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1 something that I didn't cover and, in fact, was
2 precluded --
3 MR. MOTLEY: I said that he -- this company
4 suppressed information. I said they did it on
5 numerous occasions. I said there is ample proof
6 in this record. He stood up and went on for 15
7 minute about everything they published. They
8 published this and they published that and they
9 published the other. What they didn't publish
10 was the "mouse house." He just said -- that was
11 the last part of his argument, there was no
12 suppression.
13 THE COURT: Did you not?
14 MR. CRIST: I absolutely did not address
15 anything about the biological research division.
16 THE COURT: Not the "mouse house"
17 specifically, but did you address the issue of
18 dissemination of information?
19 MR. MOTLEY: Yes.
20 MR. CRIST: I only -- the Teague documents
21 and the Rodgman documents.
22 THE COURT: I'll overrule. Go ahead.
23 (The following proceedings were held in
24 open court in the presence of the jury.)
25 THE COURT: You may continue.
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1 (Videotape playing.)
2 Answer: We felt also by determining this
3 mechanism we could then advise the company on
4 the means of -- if cigarette smoking was the
5 causation of possibly changing the product to
6 remove the triggering mechanisms.
7 Answer: There is always trade-offs in
8 cigarette design.
9 Question: You had conversations with R.J.
10 Reynolds scientists who told you the slides
11 showed what?
12 Answer: It showed a diffuse emphysema.
13 Question: Now, Doctor, did you believe
14 that the findings and the work that you were
15 engaged in in your part of the "mouse house" and
16 what you saw and discussed with the veterinarian
17 were important scientific findings?

18 Answer: Very much so. We thought that we
19 made some pretty good advances.
20 Question: Were you interested in
21 continuing your research at the time you were
22 terminated?
23 Answer: Definitely.
24 Question: Sir, to your personal knowledge,
25 was the findings of emphysema that you were
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1 shown and the jury has seen two documents about
2 ever published by R.J. Reynolds?
3 Answer: My work?
4 Question: Yes, sir.
5 Answer: No, sir.
6 Question: Well, taking this position, does
7 it cause illness? No one knows. Have you seen
8 those ads taken out by cigarette companies
9 denying or saying that nobody knows whether
10 cigarettes cause disease?
11 Answer: I can tell you what materials I've
12 seen. I mean -- maybe restate the question.
13 Question: In any of your research, did you
14 see anywhere where R.J. Reynolds put out a press
15 release or anybody quoted R.J. Reynolds as to
16 admitting that the amount of evidence
17 accumulated to indict cigarette smoke as a
18 health hazard is overwhelming?
19 Answer: No, I did not.
20 Question: Did you see from 1961 to July
21 1st, 1969, anywhere where R.J. Reynolds admitted
22 we are a drug company?
23 Answer: No, I did not.
24 Question: We are a member of the
25 pharmaceutical industry?
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1 Answer: No.
2 Question: Nicotine is a drug; did you see
3 that by Reynolds?
4 Answer: No.
5 Question: You've not seen a single press
6 release in any newspaper article you've read
7 before July 1st, 1969, where R.J. Reynolds
8 revealed the additives they've placed in
9 cigarettes, have you?
10 Answer: No.
11 Question: Well, if there weren't enough
12 BaP in there to produce the results of cancer on
13 the back of those mice, what did do it?
14 Answer: Well, there is 50 known
15 carcinogens in cigarette smoke and many of those
16 are in the particulate phase which is in --
17 present in tobacco smoke condensate. So there
18 is multiple carcinogens in the tobacco
19 condensate that accounted for the tumors in the
20 mice.
21 Question: Is it the entire satanic group
22 that causes the cancer, Doctor?
23 Answer: Yes, sir.
24 Question: You are not a pulmonary
25 pathologist?
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1 Answer: I wouldn't say that I was, no,
2 sir.

3 Question: Don't you have some file about
4 cigarette related disease that you'd like to
5 study before coming in here and giving opinions
6 about it?

7 Answer: I don't really have a file on
8 cigarette related disease. I have files on --
9 certain papers and certain orders that deal with
10 scientific issues.

11 Question: Well, how about the surgeon
12 general's reports, reports of the surgeon
13 general of the United States, have you a file on
14 those?

15 Answer: No. Actually, I've never really
16 read those reports.

17 Question: You've never read them?

18 Answer: No, I have not.

19 Question: Any of them?

20 Answer: I have never actually read the
21 specific surgeon general's report.

22 Question: And what did you do with those
23 comments? Did you send them to the cigarette
24 industry who hired you?

25 Answer: No, I just told -- I told the
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1 comments to the people that had visited me.

2 Question: These people were?

3 Answer: Attorneys representing cigarette or
4 tobacco companies.

5 Question: So you didn't even write it
6 down?

7 Answer: No.

8 Question: You just told them?

9 Answer: Yes.

10 Question: I would ask you, sir, if you can
11 identify the signature of the person who signed
12 the death certificate of Jean Connor?

13 Answer: Yes, that's my signature.

14 Question: That's your signature?

15 MR. MOTLEY: May the witness come down,
16 Your Honor?

17 THE COURT: Yes.

18 Question: How certain are you, sir, that
19 this woman died on this day from a primary lung
20 cancer and its complications?

21 Answer: I'm 100 percent certain.

22 Question: You are 100 percent certain?

23 Answer: Yes.

24 MR. MOTLEY: I would like to address
25 another subject at this time, and that is the
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1 issue of polling and common knowledge, since
2 that seems to be a focal point.

3 And I just want to review with you some of
4 the evidence in the case from the plaintiff's
5 perspective. These are documents Exhibit 64,
6 and, Ladies and Gentlemen, some of these were
7 admitted only for a special purpose, keep in
8 mind that some of this was admitted for purposes

9 that the court instructed you at the time.
10 Some smokers were emphatic in naming tar
11 while denying nicotine as the villain, others
12 were vocal naming nicotine and not tar. There
13 was no clear cut answer, but most of the smokers
14 felt you had to have nicotine to have
15 satisfaction. There was a low awareness of tar
16 an nicotine numbers and no comprehension of what
17 they mean. Now, this is an internal document of
18 Reynolds, 1972.

19 1967. Heavy smokers in younger groups of
20 better educated are a lot less inclined to
21 accept the surgeon general's report, although,
22 the great majority are aware of it. Heavy
23 smokers under 25 tend to share with nonsmokers a
24 view that advertising causes people to smoke.

25 And then I don't have time to go through
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1 all of these. Nonsmokers accept it better and
2 you'll have these documents to look at.

3 Up please. Panzer this is the famous
4 doubt. We've had a brilliant strategy for 18
5 years, creating doubt for nearly 20 years.

6 Next page. The strategy was brilliantly
7 conceived and executed. There has always been a
8 holding strategy consisting of creating doubt
9 about the health charge. And the Cigarette
10 Controversy, especially those who are present
11 and potential supporters, for example, heavy
12 smokers must perceive, understand and believe in
13 evidence to sustain their opinions that smoking
14 may not be the causal factor. 1970 survey
15 showed the majority believed that cigarettes are
16 only one of many causes of cancer.

17 Up please. This document bears close
18 scrutiny, folks, this is where they put out this
19 booklet, sent out hundreds of thousands of it
20 where they left out the "mouse house," and
21 denied that cigarettes caused disease.

22 Okay. Next page, please. 1954 Gallup poll
23 68 percent, 71 percent, one pack a day or more
24 said they don't believe it. 1969. Mr. Crist
25 asked you the question, who cares. Who cares if
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1 they had confessed? Who cared? Here is who
2 cared. 69 percent of or 62 and a half percent
3 of smoking women felt like before they would
4 agree that smoking was harmful to health that
5 the tobacco industry itself had to say that
6 smoking was harmful.

7 Now, had they published that Rodgman memo
8 where their chief scientist said the evidence
9 was overwhelming those women would have gotten
10 their answer. 34 percent 1970, this is one that
11 is marked secret. 34 percent don't know smoking
12 is hazardous to health. 41 percent think
13 cigarette smoking in moderation is safe. 54
14 percent says it's the tar. 46 percent don't
15 know and I could go on and on and on and on.

16 Ladies and gentlemen of the jury, you know,
17 I don't read a whole lot of sophisticated stuff,

18 but sometimes you read some things in fairy
19 tales and you learn a lot. Do you remember
20 Humty Dumty? Anybody remember Humty Dumty?
21 Nobody's favorite person is Humty Dumty?
22 He said a word means exactly what I say it
23 means, nothing more and nothing less. Think
24 about that when you go through this evidence.
25 Reynolds would have you believe on one hand that
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1 everybody knew cigarettes caused, and that's a
2 word. Think about the word Humty Dumty Reynolds
3 and the word cause. Humty Dumty Reynolds and
4 the word consumer acceptance. Humty Dumty
5 Reynolds. Remember Humty Dumty when you think
6 about R.J. Reynolds.

7 He told you that -- and I'm not going to
8 say a whole lot about the Rodgman memo. Mr.
9 Wilner did. But on page 13 of this document,
10 this sums up the case for punitive damages.
11 Now, this is their senior scientist. This is no
12 road scientist you understand. This is no one
13 in a laboratory, this is their principal
14 scientist in the '60s. This is man that Dr.
15 Townsend spoke so highly of. This is not a
16 criminal case, folks, but we are asking you to
17 impose a fine, so I would ask you to listen to
18 these words carefully. This is the same man
19 that said cigarette smoking should be indicted
20 because the evidence is overwhelming.

21 If a company -- tobacco company plead not
22 guilty or not proven to the charge that
23 cigarette smoke or one of its constituents is a
24 etiological -- to Humty Dumty that means cause
25 -- factor in the causation of lung cancer or
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1 some other disease, can the company justifiably
2 assume the position that publication of data
3 pertaining to cigarettes smoke composition on
4 physiological property should be withheld
5 because such data might affect adversely the
6 company's economic status when the company has
7 already implied in its plea of not guilty that
8 no such data, etiologic effect existed?

9 Now, folks, of all of the charts that they
10 brought in here and everything that was said, if
11 Reynolds had published these secret studies that
12 they were talking about, if they proved that it
13 caused cancer, don't you think they would have
14 brought that in there and carried it around on a
15 placard the size of that wall? You didn't see
16 it. You can look through the documents and you
17 won't see it. You won't see it.

18 I would like to say that Mr. Crist said
19 that he didn't necessarily agree with everything
20 I said, but I don't know whether he agrees with
21 me about damages in this case.

22 MR. CRIST: Objection, Your Honor, beyond
23 the scope.

24 THE COURT: Sustained.

25 MR. MOTLEY: When you have your verdict
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1 form you will have discrete areas to fill out,
2 please, pay very, I know you will, close
3 attention and fill them out completely, please.

4 And I want to leave you with this. I want
5 to thank you and I want you to think about
6 this. When Humty Dumty Reynolds talks about
7 trade-offs. The trade here was they got \$2.7
8 billion and Jean Connor got cancer.

9 MR. CRIST: Your Honor, I object. Beyond
10 the scope.

11 MR. MOTLEY: It's not, Judge, he used the
12 word trade off himself.

13 THE COURT: You --

14 MR. CRIST: You just instructed him not do
15 to this, Your Honor.

16 MR. MOTLEY: I'm not going into damages.

17 THE COURT: The issue of punitive damages
18 was not discussed, if I recall.

19 MR. MOTLEY: It discussed suppression, Your
20 Honor.

21 THE COURT: All right. I'll overrule the
22 objection and allow it. Go ahead.

23 MR. MOTLEY: Thank you. I took the liberty
24 to show you what difference a warning would make
25 to a young woman in the '60s. We took one of
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1 the advertising things you've seen that's in
2 evidence and I created my own warning label and
3 this is only applicable up to July 1st, 1969.

4 I want you to think for a moment what this
5 commercial would have done to prevent 170,000
6 deaths a year from lung cancer if this would
7 have been shown on TV in the '60s. You can't
8 consider this past '69. She smoked a long time
9 before 1969. Just think about those thoughts.
10 Think what this kind of advertising would have
11 done for America's children and --

12 MR. CRIST: Your Honor, I object it's
13 referring to a matter which is not in evidence.

14 MR. MOTLEY: It is in evidence.

15 THE COURT: What you are about to show is
16 in evidence?

17 MR. MOTLEY: Yes, sir. The video is in
18 evidence and I have superimposed my own thoughts
19 about the type of warning label that should have
20 been on their products before July 1st, 1969.

21 MR. CRIST: Your Honor, I still object to
22 it. We have not had an opportunity to see it.

23 THE COURT: Would the jury go back into the
24 room?

25 (The following proceedings were held in
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1 open court out of the presence of the jury.)

2 THE COURT: At the outset I asked everyone
3 -- that I fully was in favor of using
4 demonstrative devices and so forth and so on
5 provided that everyone was aware of it and it
6 was shown to everyone else.

7 MR. MOTLEY: Judge, we both assumed we were
8 going to be able to show evidence to the jury

9 and nobody --
10 THE COURT: Sir, you just told me that this
11 is not just the evidence, it is evidence which
12 now has something superimposed upon it.
13 MR. MOTLEY: Judge, I didn't take your
14 evidence to superimpose something upon it.
15 THE COURT: It's not my evidence, sir.
16 MR. MOTLEY: I'm allowed to comment on the
17 evidence. I did it in the form of a video.
18 THE COURT: All right. Let's look at it.
19 MR. MOTLEY: Okay. Same as he did.
20 MR. CRIST: Your Honor, let me just make my
21 -- first of all, I have no idea what's on this
22 videotape, but in addition to that, for them to
23 come in and no evidence whatsoever for over four
24 weeks with respect to the content of origin. I
25 gave Mr. Motley or Mr. Wilner a lot of room when
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1 he put these things up here which we haven't
2 seen before, but now they are coming in with
3 something else. There is no testimony from any
4 fact witness, no testimony from any expert
5 witness as to the content of the warning which
6 they are proposing to put up there.
7 THE COURT: Please show the video.
8 MR. MOTLEY: That's fine.
9 (Video playing.)
10 There's a wonderful world of softness, a
11 wonderful world of freshness. It's the
12 wonderful, wonderful, wonderful world of Salem
13 cigarettes.
14 Salem softness freshens your taste.
15 THE COURT: Okay. I'm sustaining this
16 objection. Mark this document for
17 identification.
18 MR. MOTLEY: Might I ask why, Your Honor?
19 THE COURT: First of all, let me just say
20 this, there was no objection initially to the
21 entire video. It is the custom -- that entire
22 video to me was a questionable type of
23 utilization of something made up for use in
24 argument, which is generally not permissible in
25 this court anyway. The fact that you've taken a
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1 piece -- there is a difference between
2 commenting on evidence --
3 MR. MOTLEY: He did the same thing, Judge.
4 THE COURT: Sir --
5 MR. MOTLEY: He did the same thing.
6 THE COURT: I don't think you are
7 listening.
8 MR. MOTLEY: He showed a video of the trial
9 itself.
10 THE COURT: I wasn't happy with that and
11 you didn't object it.
12 MR. MOTLEY: I wasn't unhappy that he did
13 it.
14 THE COURT: Well, sir, all I'm pointing out
15 to you is my view and, I believe, that the law
16 of this -- generally the law of this
17 jurisdiction, that it's within my discretion, to

18 exclude a document, a video document, which was
19 especially prepared for argument and was not in
20 evidence at all.
21 Now, you could have shown that video if you
22 wanted, I imagine, during the course of your
23 argument and then made a comment on it, but you
24 cannot fabricate something that is entirely new
25 and present it to the jury at this time in front
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1 of -- without any warning whatsoever. I don't
2 believe it's correct argument.
3 MR. MOTLEY: I didn't know we were required
4 to give counsel warning of what we intended to
5 do in --
6 THE COURT: I said you cannot fabricate by
7 taking an exhibit and then modifying it or
8 altering it in some way to create a relatively
9 new piece of evidence and then present that to
10 the jury for the first time in the last three
11 minutes of argument, actually we're a minute
12 over at this point, in fact, but by all means it
13 may be marked for identification.
14 MR. MOTLEY: With all due respect, I was
15 unaware of that, that you couldn't do that.
16 May I proceed verbally?
17 THE COURT: Yes, you may.
18 THE CLERK: Plaintiff's WWW.
19 THE COURT: WWW for Plaintiff?
20 MR. MOTLEY: I don't know.
21 (Plaintiff's Exhibit WWW was marked for
22 identification.)
23 THE COURT: Recall the jury.
24 (The following proceedings were held in
25 open court in the presence of the jury.)
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1 THE COURT: The objection is sustained.
2 MR. MOTLEY: I'd ask you to use your
3 imagination, think about the -- form a verbal
4 picture in your mind of the young girl on the
5 swing in Salem country. Where she swings
6 through the air, what if they had interrupted
7 that swing and flashed up there, from the 1960
8 document, warning 35,000 people have died from
9 cigarette smoking and lung cancer, source R.J.
10 Reynolds Research Department.
11 What if as they walked off arm in arm with
12 a cigarette in her mouth and stopped the film,
13 flashed up there senior scientist for R.J.
14 Reynolds admits the evidence is overwhelming
15 that cigarette smoking causes lung cancer.
16 This case is resting in your hands. Thank
17 you. God bless you.
18 THE COURT: I want you to relax for a
19 minute. I'm going to have a side-bar
20 conference. Maybe one of the very last ones,
21 very close to one of the last ones in the entire
22 trial.
23 (The following proceedings were held at
24 side-bar out of the presence of the jury.)
25 MR. WERBER: Mr. Maxwell is here.
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1 THE COURT: I just wanted to consult with
2 you as to where we go from here. I could --
3 it's going to take me 20 minutes to charge the
4 jury. They'll get started at 10 to 5. I was
5 thinking about keeping them down here to 6:30 or
6 7:00. I want to make sure that any of them
7 don't have any problems. I think we'll tell
8 them -- let them go no later than 7:00.

9 MR. MOTLEY: Judge, if they ask --

10 THE COURT: Well, I mean, if they don't
11 have -- I mean, if they have no problem with
12 that --

13 MR. MOTLEY: No, what I was going to say if
14 they have no problem with that at 7:00 if they
15 say, look, give us another hour we have a
16 verdict.

17 THE COURT: Oh, you bet you.

18 MR. MOTLEY: I don't want to lose them.

19 THE COURT: Oh, no, no, no. What I'm
20 saying is that -- one -- and I don't want to
21 have them think that we are going to keep them
22 down there until 11- or 12:00 or something like
23 that. I think I should give them an idea of
24 when they may be free. Any problem with that?

25 MR. CRIST: No, Your Honor.

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1 MR. JOHNSON: No, Your Honor.

2 THE COURT: I mean, I've got tickets to
3 Willie Nelson myself tonight.

4 MR. JOHNSON: Willie who?

5 MR. WERBER: Tex Williams.

6 THE COURT: All right. I'll go ahead and
7 get them started with that.

8 Everything was going so smoothly. This is
9 a subject of some discussion of which you were
10 doing, even the question of reading long
11 transcripts or excerpts of the transcripts of
12 the trial are not permitted in the federal
13 courts in the middle district of Florida and
14 there has been some discussion in this court
15 that this is a local -- a peculiarity. There
16 has been some leeway with it --

17 MR. MOTLEY: I just never.

18 THE COURT: -- in Duval County, but I
19 realize you may not have been aware of it.

20 MR. MOTLEY: I've never run into it
21 wherever I have been.

22 MR. CRIST: I have.

23 MR. WILNER: It really is true there are so
24 many unwritten rules about that kind of thing.

25 THE COURT: That is why it's always a good
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1 thing to clear it all before that way -- and I
2 know you want to have --

3 MR. MOTLEY: They would have had three
4 hours of arguments if --

5 MR. CRIST: Judge, after you charge them,
6 can we leave --

7 THE COURT: No, if I have to stick around
8 you have to. You want to go out and eat at a

9 nice restaurant somewhere and I'll --
10 MR. WILNER: I'll bring you back something.
11 MR. CRIST: I want to go change clothes.
12 THE COURT: Yes, of course, you may. And
13 I'll --
14 MR. MOTLEY: About time you put on a shirt
15 different than the one you've worn for four
16 weeks.
17 MR. CRIST: Okay.
18 THE COURT: The other thing I do so you'll
19 be aware is that after the jury is -- after I
20 finish charging the jury it's my custom to ask
21 everyone to approach the bench for one last time
22 and I will ask you the following question: Does
23 anyone have -- other than as previously
24 expressed in charge conference, does anyone have
25 any objections to the instructions as read?

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1 I'll ask for that and the same for the verdict
2 form.
3 MR. WILNER: Yes, Your Honor.
4 THE COURT: And then we don't have to meet
5 here anymore at all.
6 MR. CRIST: Okay, Judge.
7 (The following proceedings were held in
8 open court in the presence of the jury.)
9 THE COURT: Members of the jury, I shall
10 now instruct you on the law that you must follow
11 in reaching your verdict.
12 (Pager interruption.)
13 THE COURT: Let me start again. Members of
14 the jury, I shall now instruct you on the law
15 that you must follow in reaching your verdict.
16 It is your duty as jurors to decide the issues
17 and only those issues that I submit for
18 determination by your verdict. In reaching your
19 verdict, you should consider and weigh the
20 evidence, decide the disputed issues of fact,
21 and apply the law on which I shall instruct you
22 to the facts as you find them from the
23 evidence.

24 The evidence in this case consists of the
25 sworn testimony of the witnesses, all exhibits
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1 received in evidence, and all facts that may be
2 admitted or agreed to by the parties.
3 In determining the facts you may draw
4 reasonable inferences from the evidence, you may
5 make deductions and reach conclusions which
6 reason and common sense lead you to draw from
7 the facts shown by the evidence in this case.
8 But you should not speculate on any matters
9 outside the evidence.
10 In determining the believability of any
11 witness and the weight to be given the testimony
12 of any witness, you may properly consider the
13 demeanor of the witness while testifying, the
14 frankness or lack of frankness of the witness,
15 the intelligence of the witness, any interest
16 the witness may have in the outcome of the
17 case. The means and opportunity the witness had

18 to know the facts about which the witness
19 testified, the ability of the witness to
20 remember the matters about which the witness
21 testified and the reasonableness of the
22 testimony of the witness considered in the light
23 of all of the evidence in the case and in the
24 light of your own experience and common sense.
25 You have heard opinion testimony from
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1 persons referred to as expert witnesses. You
2 may accept such expert -- pardon me. You may
3 accept such opinion testimony, reject it or give
4 it the weight you think it deserves considering
5 the knowledge, skill, experience, training or
6 education of the witness, the reasons given by
7 the witness for the opinion expressed and all
8 other evidence in the case.

9 In your deliberations you are to consider
10 several distinct claims, plaintiff Dana
11 Raulerson as personal representative of the
12 estate of Jean Connor alleges that defendant
13 Reynolds was negligent in failing to warn Jean
14 Connor prior to July 1, 1969, of the known or
15 knowable dangers associated with smoking -- with
16 smoking Defendant Reynolds' cigarettes and that
17 such negligence was a legal cause of the injury
18 and death of the decedent, Jean Connor.

19 Plaintiff Dana Raulerson also alleges that
20 Defendant Reynolds was negligent in designing,
21 manufacturing and selling a product that when
22 used as intended was not reasonably safe for
23 foreseeable users.

24 Plaintiff Dana Raulerson also alleges that
25 the cigarettes which were manufactured and sold
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1 by Defendant Reynolds were in a defective
2 condition, unreasonably dangerous to the user
3 when they left the possession of Defendant
4 Reynolds and that such defect was a legal cause
5 of the injuries and death of the decedent Jean
6 Connor.

7 Although, these claims have been tried
8 together each is separate from the other and
9 each party is entitled to have you separately
10 consider each claim as it effects that party.
11 Therefore, in your deliberations you should
12 consider the evidence as it relates to each
13 claim separately as you would had each claim
14 been tried before you separately.

15 In considering the negligence claims of
16 Plaintiff Dana Raulerson against Defendant
17 Reynolds you must answer two separate
18 questions. First, you must determine whether
19 Defendant Reynolds was negligent by failing to
20 warn Jean Connor prior to July 1, 1969, of the
21 known or knowable dangers associated with
22 smoking cigarettes manufactured by Defendant
23 Reynolds.

24 Second, you must determine whether
25 Defendant Reynolds was negligent in designing,
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1 manufacturing and selling a product that when
2 used as intended was not reasonably safe for
3 foreseeable users. If you decide that Defendant
4 Reynolds was negligent on one or both of these
5 claims you must then determine whether such
6 negligence was a legal cause of loss, injury or
7 damage sustained by Jean Connor's estate.

8 If the greater weight of the evidence does
9 not support the negligence claims of Plaintiff
10 Dana Raulerson against Defendant Reynolds, then
11 your verdict on those claims should be for
12 Defendant Reynolds.

13 The issues for your determination on the
14 claim of Dana Raulerson against Defendant
15 Reynolds on whether the cigarettes, I believe,
16 this pertains to the strict liability claim and
17 there was a word left out here.

18 Let me read this again. The issues for
19 your determination on the claim of Plaintiff
20 Dana Raulerson against Defendant Reynolds on
21 whether Defendant Reynolds' cigarettes, which
22 were manufactured and sold by Defendant Reynolds
23 were defective when they left the possession of
24 Defendant Reynolds and, if so, whether such
25 defect was a legal cause of the death of the
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1 decedent Jean Connor.

2 A product is defective if by reason of its
3 design the product is in a condition
4 unreasonably dangerous to the user of the
5 product and the product is expected to and does
6 reach the user without substantial change
7 effecting that condition.

8 A manufacturer has a duty to exercise
9 reasonable diligence in warning of reasonably
10 foreseeable dangers associated with the use of
11 its product. A manufacturer has a duty to warn
12 when the hazards associated with the product are
13 not obvious, reasonably apparent or not as well
14 known to the user as to the manufacturer.

15 A manufacturer, however, does not have a
16 duty to warn of risks associated with its
17 products when those risks are reasonably known
18 to the average consumer with a knowledge common
19 to the community. Therefore, you should
20 consider whether average consumers were aware of
21 the risks associated with smoking which
22 Plaintiff Dana Raulerson claims caused the
23 defendant Jean Connor -- decedent Jean Connor's
24 death.

25 A product is unreasonably dangerous because
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1 of its design if the product fails to perform as
2 safely as an ordinary consumer would expect when
3 used as intended or in a manner reasonably
4 foreseeable by the manufacturer or the risk of
5 danger in design outweighs the benefits.

6 In determining whether the risk of danger
7 in the design outweighed the benefit of the
8 product you should consider the following

9 factors: One -- I see that some of you may be
10 taking notes. It is not necessary to take
11 notes. You will be given a copy of these
12 instructions to take back with you. Let me just
13 repeat it.

14 In determining whether the risk in the
15 danger of design outweigh the benefit of the
16 product you should consider the following
17 factors: One, the usefulness and desirability
18 of the products. Two, the availability of other
19 and safer products who meet the same need.
20 Three, the likelihood of injury and its probable
21 seriousness. Four, the obviousness of the
22 danger. Five, common knowledge and normal
23 public expectation of danger. Six, avoidability
24 of injury by care and use of the product
25 including the effect of instructions or

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1 warnings. And Seven, the ability to eliminate
2 the danger without seriously impairing the
3 usefulness of the product or making it unruly
4 expensive.

5 If the greater weight of the evidence does
6 not support the claim of Plaintiff Dana
7 Raulerson that Defendant Reynolds cigarettes
8 were defective and unreasonably dangerous, then
9 your verdict should be for the Defendant
10 Reynolds.

11 In considering Plaintiff Dana Raulerson's
12 failure to warn claims, you are instructed that
13 since July 1, 1969, federal law has required
14 that cigarette packages contain certain
15 warnings. There is no dispute in this case that
16 Defendant Reynolds cigarettes were labeled in
17 accordance with this law.

18 Accordingly, I instruct you as a matter of
19 law that Defendant Reynolds has provided legally
20 sufficient warnings since July 1, 1969,
21 concerning any relationship between smoking and
22 health and you are not to consider any failure
23 to warn claim or claims that the federally
24 mandated warnings were inadequate after July 1,
25 1969.

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1 The issue for your determination regarding
2 Defendant Reynolds statute of limitations
3 defense is whether decedent Jean Connor filed
4 her action within the time the facts giving rise
5 to her cause of action were discovered or should
6 have been discovered by the decedent Jean Connor
7 with the exercise of due diligence.

8 In determining this issue you should
9 consider whether the decedent Jean Connor both
10 knew or reasonably should have known of her
11 claimed injury and that Defendant Reynolds'
12 product was the likely cause of her injury prior
13 to March 29, 1991.

14 On the Defendant Reynolds' state of the art
15 defense you must determine whether the alleged
16 injuries suffered by Jean Connor as a result of
17 the challenged design would have been avoided or

18 less severe had Defendant Reynolds used a
19 feasible and available alternative design.
20 In making this determination you are
21 instructed that Defendant Reynolds is held
22 accountable to the level of scientific and
23 technical knowledge existing at the time that it
24 designed the cigarettes smoked by Jean Connor.
25 In this regard a manufacturer has the duty to
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1 possess expert knowledge in the field of its
2 products.

3 If the greater weight of the evidence does
4 not support either of the defenses of the
5 Defendant Reynolds and the greater weight of the
6 evidence does support either of the claims of
7 Plaintiff Dana Raulerson, then your verdict
8 should be for Plaintiff Dana Raulerson and the
9 total amount of her damages.

10 Greater weight of the evidence means the
11 more persuasive and convincing force and effect
12 of the entire evidence in the case.

13 Negligence is the failure to use reasonable
14 care. Reasonable care is that degree of care
15 which a reasonably careful person would use
16 under like circumstances.

17 Negligence may consist either in doing
18 something that a reasonably careful person would
19 not do under like circumstances or in failing
20 to do something that a reasonably careful person
21 would do under like circumstances.

22 Negligence is a legal cause of injury if it
23 directly and in a natural and continuance
24 sequence produces or contributes substantially
25 to producing such injury so that it can

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1 reasonably be said that but for the negligence
2 the injury would not have occurred.

3 In order to be regarded as a legal cause of
4 loss, injury or damage negligence need not be
5 the only cause. Negligence may be a legal cause
6 of loss, injury or damage even though it
7 operates in combination with the act of another
8 or some other cause. If such other causes occur
9 at the same time as the negligence, and if the
10 negligence contributes substantially to
11 producing such loss, injury or damage.

12 Similarly a defect in a product is a legal
13 cause of injury if it directly in a natural and
14 continuous sequence produces or contributes
15 substantially to producing such injury so that
16 it can reasonably be said that but for the
17 defect the injury or damage would not have
18 occurred.

19 In order to be regarded as a legal cause of
20 loss, injury or damage the defect need not be
21 the only cause. A defect may be a legal cause
22 of loss, injury or damage even though it
23 operates in combination with the act of another
24 or some other cause if such other cause occurs
25 at the same time the defect has its effect and

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1 that the defect contributes substantially to
2 producing such loss, injury or damage.

3 If your verdict is for the Defendant
4 Reynolds you will not consider the matter of
5 damages, but if you find for the Plaintiff Dana
6 Raulerson you should award an amount of money
7 that the greater weight of the evidence shows
8 will fairly and adequately compensate decedent
9 Jean Connor's estate and her survivors for such
10 damage, loss or injury which they sustained as a
11 result of the action of the Defendant Reynolds
12 including any such damages as the estate and the
13 survivors are reasonably certain to experience
14 in the future.

15 In determining any damages recoverable on
16 behalf of the decedent Jean Connor's estate you
17 should consider the following elements:

18 One, the loss of net accumulation. Net
19 accumulation is the part of the decedent Jean
20 Connor's net income from salary or business
21 after taxes including pension benefits, but
22 excluding income from investments continuing
23 beyond death which the decedent Jean Connor
24 after paying her personal expenses and monies to
25 the support of her survivors would have left --

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1 would have left as part of her estate if she had
2 lived her normal life expectancy.

3 Two, medical or funeral expenses due to the
4 decedent Jean Connor's -- due to the decedent
5 Jean Connor's injury or death which had been
6 paid or became a charge against Jean Connor's
7 estate.

8 In determining any damages to be awarded
9 the decedent Jean Connor's personal
10 representative -- for the benefit of decedent
11 Jean Connor's surviving children you shall
12 consider certain elements of damage for which
13 there is no exact standard for affixing the
14 compensation to be awarded.

15 Any such award should be fair and just in
16 the light of the evidence regarding the
17 following elements. The loss by Valerie Dizor,
18 Joseph Marion, Jr., or Matthew Marion of
19 parental companionship, instruction and guidance
20 and their mental pain and suffering as a result
21 of the decedent Jean Connor's injury and death.

22 In determining how long the decedent Jean
23 Connor would have lived, had she lived out her
24 normal life, you may consider her life
25 expectancy at the time of her death. The

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1 mortality tables received in evidence may be
2 considered in determining how long the decedent
3 Jean Connor may have been expected to live.
4 Such tables are not binding on you, but may be
5 considered together with other evidence in the
6 case bearing on her health, age and physical
7 condition before her injury and death in
8 determining the probable length of her life.

9 Any amount of damages which you allow for
10 of net accumulation should be reduced to its
11 present money value and both the amount of such
12 loss net accumulation and their present money
13 value should be stated in your verdict. The
14 present money value of future economic damages
15 is the sum of money needed now which together
16 with what that sum will earn in the future --
17 will compensate Plaintiff Dana Raulerson for
18 those losses as they are actually experienced in
19 the future years.

20 If you find for Plaintiff Dana Raulerson
21 and against Defendant Reynolds you should
22 consider whether in addition to compensatory
23 damages, punitive damages are warranted in the
24 circumstances of this case as punishment and as
25 a deterrent to others.

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1 Punitive damages are warranted if you find
2 that, one, the conduct causing damage to Jean
3 Connor was so gross and flagrant as to show a
4 reckless disregard of human life or the safety
5 of persons exposed to the effects of such
6 conduct, or, two, the conduct showed such an
7 entire lack of care that the Defendant Reynolds
8 must have been consciously indifferent to the
9 consequences, or, three, that the conduct showed
10 such an entire lack of care that the Defendant
11 Reynolds must have wantonly or recklessly
12 disregarded the the safety and welfare of the
13 public or, four, the conduct showed such
14 reckless indifference to the rights of others as
15 to the equivalent of the intentional violation
16 of those rights.

17 In determining the amount of punitive
18 damages, if any, to be assessed and as
19 punishment and as a deterrent to others you
20 should consider the following: One, the nature,
21 extent and degree of misconduct and the related
22 circumstances. Two, the Defendant Reynolds'
23 financial resources.

24 Any punitive damages you assess would be in
25 addition to any compensatory damages you award.

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1 You may in your discretion decline to assess
2 punitive damages.

3 The fact that R.J. Reynolds Tobacco Company
4 is a corporation must not prejudice you in your
5 deliberations or in your verdict. You may not
6 discriminate between corporation and natural
7 individuals, both are persons in the eyes of the
8 law and both are entitled to the same fair and
9 impartial consideration by the same legal
10 standard.

11 Your verdict must be based on the evidence
12 that has been received and on the law on which I
13 have instructed you.

14 In reaching your verdict you are not to be
15 swayed from the performance of your duty by
16 prejudice, sympathy or any other sentiment for
17 or against any party.

18 When you retire to the jury room you should
19 select one of your number to act as foreman or
20 forewoman to preside over your deliberations and
21 sign your verdict. Your verdict must be
22 unanimous, that is, your verdict must be agreed
23 to by each of you. You will be given a form of
24 verdict which I shall now read to you and I'm
25 going to ask the bailiff to distribute to you
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1 each a copy of the verdict form for you to
2 follow as I go through it.

3 Now, remember this is going to be a
4 unanimous verdict so I'm going to collect those
5 verdict forms so we don't have six different
6 verdicts coming back.

7 At the top is what we call the style of the
8 case, and it shows the court and the names of
9 the parties.

10 Verdict.

11 We the jury return the following verdict:
12 And there follows then a number of questions and
13 places for you to provide answers to be filled
14 in and finally a date and a signature line.

15 One, was there negligence on the part of
16 Defendant R.J. Reynolds Tobacco Company which is
17 a legal -- which was a legal cause of the death
18 of decedent Jean Connor? And you'll see there
19 is a place for you to check either yes or no.

20 Two, were the cigarettes manufactured by
21 Defendant R.J. Reynolds Tobacco Company
22 unreasonably dangerous and defective in the
23 legal cause of the death of decedent Jean
24 Connor? Again, there is a place for you to
25 check yes or no.

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1 If your answers to questions one and two
2 are both no then your verdict is for the
3 Defendant R.J. Reynolds Tobacco Company and you
4 should proceed no further except to sign and
5 return your verdict. If your answer is yes to
6 either question one or two, please answer all
7 the remaining questions on this verdict form.

8 Three, did the decedent Jean Connor know or
9 should she have reasonably known of her claimed
10 injuries on or before March 29th, 1991? Again,
11 there is a place for you to mark yes or no.

12 If your answer to question three is yes
13 your verdict is for Defendant R.J. Reynolds
14 Tobacco Company, however, please answer all of
15 the remaining questions on the verdict form.

16 Four, what is the amount of any net
17 accumulations lost by the estate of Jean
18 Connor? And there is a line with a dollar sign
19 for you to fill in a figure or such a figure as
20 you determine is appropriate.

21 Five, what is the present value of such
22 loss net accumulation? Again, a dollar sign and
23 a blank to fill in whatever you choose there.

24 Six, what is the amount of any medical or
25 funeral expenses resulting from the injury and

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1 death of decedent Jean Connor paid by or charged
2 to the estates of Jean Connor? Again, a dollar
3 sign and a blank.

4 Seven, what is the amount of any damages
5 sustained by Valerie Dizor in the loss of
6 parental companionship, instruction and guidance
7 and in Valerie Dizor's pain and suffering as a
8 result of the decedent's injury and death?

9 There are two blanks there and the first is in
10 the past and there is a dollar sign and a blank,
11 and the second is in the future, again, with a
12 dollar sign and a blank.

13 Eight, what is the amount of any damages
14 sustained by Joseph Marion, Jr., in the loss of
15 parental companionship, instruction and in
16 Joseph Marion, Jr's pain and suffering which
17 resulted from decedent's injury and death?

18 Again, there are two lines for you to fill
19 in. Such as you wish as there were with regard
20 to the previous question.

21 Nine, what is the amount of any damages
22 sustained by Mathew Marion in the loss of
23 parental companionship, instruction and guidance
24 and in Mathew Marion's pain and suffering as a
25 result of the decedent's injury and death?

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1 Again, two lines as you previously saw for the
2 others.

3 Ten, under the circumstances of this case
4 state whether punitive damages are warranted
5 against Defendant R.J. Reynolds Tobacco
6 Company. And then there is a place for you to
7 indicate yes or no.

8 Eleven, what is the total amount of
9 punitive damages, if any, if you find should be
10 assessed against Defendant R.J. Reynold Tobacco
11 Company, again a dollar sign and a blank.

12 If you elect not to assess punitive damages
13 against Defendant R.J. Reynolds you should enter
14 zero as the amount of damages there. Then it
15 says so say we all this blank day of April --
16 pardon me May, 1997. Time flies when we are
17 having fun.

18 When you have agreed on your verdict the
19 foreman or forewoman acting for the jury should
20 date and sign the appropriate form of verdict.

21 Members of the jury, if you'll wait just
22 one moment. Counsel approach.

23 (The following proceedings were held at
24 side-bar out of the presence of the jury.)

25 THE COURT: Other than as previously
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1 stated, are there any objections on behalf of
2 plaintiff to the instructions as I read them to
3 the jury?

4 MR. MAXWELL: No, Your Honor.

5 THE COURT: Defendant?

6 MR. JOHNSON: No, Your Honor.

7 THE COURT: Are there any objections as to
8 the form of verdict as I read to the jury and as

9 will be delivered to them?
10 MR. MAXWELL: No, Your Honor.
11 MR. JOHNSON: No, Your Honor.
12 THE COURT: Very well.
13 (The following proceedings were held in
14 open court in the presence of the jury.)
15 THE COURT: In a few minutes I'm going to
16 ask you to commence your deliberations after we
17 have all of the evidence that is going to go
18 back with you. In addition to those items of
19 evidence you will receive the original verdict
20 form and a copy of the instructions, a written
21 copy of the instructions as I read them to you,
22 so we can just --
23 How much time do you think you need?
24 THE CLERK: As soon as I can get them
25 together.

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1 THE COURT: What we are going to do is
2 declare a brief recess until he is ready and
3 then -- you are not to deliberate yet until I
4 send you back with all of the evidence in the
5 room. We'll be in recess until whatever it
6 takes.
7 (Short recess.)
8 THE COURT: All right. Members of the
9 jury, at this time, I'm going to allow you to
10 retire to start to consider your verdict. The
11 clerk will bring back, as you go back, all of
12 the exhibits that have been received in evidence
13 as well as the verdict form and copies of the
14 instructions.
15 Do you have copies of the jury
16 instructions?
17 BAILIFF: Your Honor, I have it right
18 there.
19 THE COURT: They are to get those as well.
20 One copy for each of you.
21 MR. CRIST: Your Honor, can I -- has the
22 court clarified how long they will be
23 deliberating, Your Honor?
24 THE COURT: Yes, I already discussed it.
25 We had an intimate conversation while you were
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1 gone and I anticipate that -- we anticipate
2 they'll stay down here until approximately 7:00
3 until -- unless they feel they're very close.
4 Other than that it will be around 7:00 then and
5 they made their phone calls.
6 Any questions with regard to that?
7 MR. MAXWELL: None from plaintiff.
8 THE COURT: Anybody want to have a side-bar
9 conference? No request, then you may retire and
10 consider your verdict. All right. Court will
11 be in recess.
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P R O C E E D I N G S

May 2, 1997 7:03 p.m.

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(The following proceedings were reported by Terrie Cook.)

(The following proceedings were held out of the presence of the jury:)

THE COURT: Does anyone want to request the Blockbuster charge yet? Recall the jury.

MR. CHRIST: Your Honor, before we do that, I would just like to welcome back to court Ms. Grant, who has come to visit this evening. I hope everything is well.

MS. GRANT: She passed away.

THE COURT: Oh, I'm sorry to hear it. Recall the jury.

(The following proceedings were held in open court in the presence of the jury:)

THE COURT: Okay. Be seated. You recall that when I sent you out, I said we'd keep you until about 7:00 o'clock unless you felt that you were so close to -- to the decision on this thing you wanted to stay later. So I will -- you know, without asking what or anything like that, do you want to go home now or do you want

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to stay?

THE JURORS: Go home.

THE COURT: Go home. Okay.

A JUROR: Sorry.

THE COURT: That's okay. I would remind you, yet again, I know your deliberations have begun, but you're to delib- -- you are to deliberate only here and in the presence of each other. So when you go home, the same rules apply that have in the past, namely, that you're not to discuss the case with anyone or even get a conference call going with the six of you. All deliberations will have to be here in the courtroom.

And all the same admonitions which I've previously given you, therefore, will still apply. Does anyone want to be refreshed as to those? Don't talk to anyone, don't watch anything about the case on TV or what have you. There's a possibility there may be stuff on TV about you, I don't know, but avoid it to the extent that you can.

Everyone have a pleasant weekend. Come back at 9:00 o'clock here. I found out that this courtroom will be down next week, so you

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1 will be able to continue -- I take it you've
2 gotten some use to --

3 A JUROR: Home sweet home.

4 THE COURT: -- you're relatively
5 comfortable there. I mean, there's a place I
6 could move you that's a little bit bigger and
7 nicer, but I think you'd just as soon stay where
8 you are.

9 I will look forward to seeing you next
10 week. Actually, unless anyone requests it
11 specifically, I don't think we need to convene
12 court for you to resume your deliberations.
13 Does anyone want me to for any reason?

14 MR. WILNER: It's not -- the formality
15 would not be necessary for the plaintiffs, Your
16 Honor.

17 MR. CRIST: Your Honor, we're certainly
18 agreeable to that as well.

19 THE COURT: Yes.

20 THE BAILIFF: If I may ask one question.

21 THE COURT: Yes.

22 THE BAILIFF: In the last tobacco trial I
23 had we had the jurors coming in at different
24 times, you know, arrive at different times and I
25 had them all wait out here until they all were
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1 here.

2 THE COURT: Good.

3 THE BAILIFF: And I'd like to know if
4 that's procedure, you'd like me to do that.

5 THE COURT: That'd be fine.

6 THE CLERK: May I remind you of something?
7 Monday we have about 300 prospective jurors
8 coming in and you have parking -- you've got the
9 parking? You've got places for them?

10 THE BAILIFF: I've already taken care of
11 it.

12 THE COURT: All jurors who have been here a
13 month get preference.

14 A JUROR: Five weeks Monday.

15 THE COURT: Someone have tickets? You have
16 tickets.

17 THE BAILIFF: I've gotten them and I've
18 passed them --

19 THE COURT: No, no, someone had tickets?

20 A JUROR: That's for tomorrow.

21 A JUROR: Oh, me, yeah.

22 THE COURT: Okay. Well, enjoy the show.
23 I'm going to see Willie Nelson right now as a
24 matter of fact. Casuals, you know.

25 Okay. Have a pleasant weekend, everyone.
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1 We'll be in recess until further word from the
2 jury. Y'all resume -- be here at 9:00 o'clock.

3 A JUROR: How is Mr. Raulerson?

4 THE COURT: The word on Mr. Raulerson,
5 everyone, is that he is in the hospital and has
6 been diagnosed --

7 THE CLERK: He's home now, Your Honor.

8 THE COURT: He's home?

9 THE CLERK: Yep.
10 THE COURT: I thought it was pneumonia.
11 THE CLERK: It is, but they shot him full
12 of antibiotics.
13 THE COURT: Okay. You see an old friend is
14 out there.
15 THE BAILIFF: Ms. Grant.
16 THE COURT: Ms. Grant is out there
17 visiting, but you can't talk to her until
18 later. Very well. Y'all have a good weekend.
19 (The proceedings were adjourned at 7:10
20 p.m.)
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